IN THE SUPREME COURT OF FLORIDA

CASE No. SC03-1846

INQUIRY CONCERNING A JUDGE NO. 02-466

JOHN K. RENKE III

BRIEF AMICUS CURIAE RESPECTFULLY REQUESTING THIS COURT TO OVERTURN THE JQC'S FINDING OF JUDGE RENKE'S GUILT AS TO COUNT 8

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F. = indicates the Findings, Conclusions and Recommendations by the Hearing Panel of the Judicial Qualifications Commission dated November 17, 2005. Note: Any cite to evidence by the Panel will be included in the quotation or otherwise indicated; where no cite to evidence by the panel is included or indicated, none was offered by the panel as support for the finding or determination.

T. = Transcript of proceedings of the September 6, 2005 hearing before the Hearing Panel of the Judicial Qualifications Comission

J. Exh. = Judge Renke's Exhibit entered into the record at the September 6, 2005 hearing

JQC Exh. = Judicial Qualification Commission's Exhibit entered into the record at the September 6, 2005 hearing

SUMMARY OF ARGUMENT

The JQC proceedings resulting in the finding of guilt on Count 8 were conducted without respecting the due process and privacy rights of either Judge Renke or John K. Renke, which necessitates the rejection of the finding by this court. Further, the JQC focused on answering one question in its deliberations and findings: whether compensation was due to Judge Renke in 2002 under his employment contract with John Renke II. The JQC found that Judge Renke did not have an enforceable right to compensation until 2003, and reasoned from this that the condition stating payment was due in 2003 was not subject to modification, so that John Renke II was forbidden to pay the compensation before 2003 by the parties' unmodifiable conditional contract, and his payment made for the purpose of compensation "eventually turned out to be an illegal campaign contribution." (quotation from F. p. 32)

John Renke II believes that the JQC has asked the wrong question on two levels. First, the key question is not whether John Renke II had an enforceable duty to pay in 2002, but whether he had a right to offer payment if he chose to do so. Second, the whole focus on the employment contract is misplaced. The key question is whether John Renke II made an improper contribution under Florida Statute Chapter 106, as Count 8 alleges. Contribution is defined as a payment "made for the purpose of influencing an election". Florida Statute §106.11(3)(a).

Therefore, the key issue is whether the payments from John Renke II to Judge Renke in 2002 were "made for the purpose of influencing an election". Id. If clear evidence shows that John Renke II made payment to Judge Renke in 2002 for the purpose of compensating him for work performed, a determination made in hindsight that his payment was premature under the employment contract cannot change his clear purpose at the time payment was made. The JQC would have had to conclude that John Renke II knew he had no contractual right to pay Judge Renke in 2002 and did it anyway, but there is no such finding. Rather the evidence and findings clearly demonstrate that both John Renke II and Judge Renke believed they were free to agree to payment of the compensation in 2002, and their intent and understanding is dispositive as a matter of contract law. The appropriate time of payment under the parties' agreement can only properly be determined by an examination of their conduct to discern the parties' own intent and understanding as to time of payment. Kuharske v. Lake County Citrus Sales, Inc., 44 So.2d 641, 642 (Fla. 1950).

It is not the JQC's prerogative to force a condition into the parties' contract contrary to their clear intent and understanding. The evidence and findings of the JQC prove that John Renke II and Judge Renke intended and understood their agreement to allow payment in 2002. Therefore, the JQC's finding that payment was forbidden was in error and contrary to the established principles of contract

law. Further, even if this Court accepts the JQC's finding that the contract forbid payment in 2002, this determination made in hindsight and clearly contradicting the parties' understanding and intent in 2002, cannot convert John Renke II's purpose in making the payment from compensation to a contribution.

I. THIS COURT SHOULD REJECT THE JQC'S FINDING OF GUILT ON COUNT 8 BECAUSE THE PROCEEDINGS WERE UNCONSTITUTIONAL AND THE FINDING WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE[1]

A. The Proceedings on Count 8 Violated the Due Process and Privacy Rights of Judge Renke and John Renke II

The factual evidence and legal authority establishing the invasion of privacy and due process violations that the JQC proceedings caused to Judge Renke are comprehensively addressed in his Response to the Florida Judicial Qualifications Commission's Motion for Leave to File Notice of Amended Formal Charges dated March 3, 2005. John Renke II, identified by name in Count 8 and publicly accused therein of unethical and illegal conduct, was similarly denied his rights to privacy and due process. As detailed in Judge Renke's Response, the JQC counsel filed and made public Count 8 which alleged wrongdoing by both Judge Renke and

[1] As an initial matter, the facts alleged by the JQC, even if true, are incapable of supporting a determination that Judge Renke violated Canon 1 or 2A, or Florida Statutes §§ 106.08(1)(a) or 106.08(5) or 106.19(1)(b). In Count One, the JQC alleged that during the campaign, Judge Renke was "not at that time a sitting or incumbent judge," which is factually correct. This Court has stated that only Canon 7 applies to first-time judicial candidates, and Canons 1 and 2 can only be applied to the conduct of incumbent judges. In re Kinsey, 842 So.2d 77 (Fla. 2003) (rejecting the JQC's determination that Judge Kinsey's conduct could have violated Canons 1 or 2 because she was not then a judge). In re Kinsey, 842 So.2d 77 (Fla. 2003) prohibit a person from making an improper contribution to a campaign. The only contribution alleged to have been made by Judge Renke was to his own campaign. However, Florida Statute § 106.19(1)(b) explicitly states: "The contribution limits provided in this subsection do not apply to … amounts contributed by a candidate to his or her own campaign." As it did on similar facts in In re Gooding, this court should reject the JQC's finding that Judge Renke's conduct violated a provision requiring the filing of required financial reports (here, § 106.19(b); in Gooding, Canon 6B) because here, as in Gooding, the JQC has failed to allege or prove that the judge "was required to and failed to report his conduct." Id. At 905 So. 2d 121, 123 (Fla. 2005) (rejecting the JQC's determination that Judge Gooding violated Canon 6B because the JQC failed to allege facts establishing the reporting requirement and its violation). Here as in Gooding, "the campaign finance statutes of Chapter 106 contain many reporting requirements, but the JQC did not charge a violation of any of them." Id.

John Renke II before approval by the Hearing Panel, which then allowed the amendments over Judge Renke's objection that he had been deprived of a 6B probable cause hearing and his due process and privacy rights by the JQC's actions. John Renke II was further handicapped in his ability to offer any meaningful defense to the JQC's public allegations of wrongdoing because the JQC refused him even the limited rights granted to Judge Renke: to be represented by counsel; to hear and view the evidence against him; to confront adverse witnesses; to present to the JQC arguments supporting his innocence; or to even be present at the hearing which publicly proclaimed and decided his alleged guilt, except as a witness.[2] The result of the JQC's proceedings is that the public has heard in detail one-sided allegations by the JQC that Judge Renke and John Renke II engaged in unethical and wrongful conduct, while they have had limited access to facts and arguments in support of the innocence of Judge Renke and John Renke II.

Judges are certainly entitled to their constitutional rights during JQC proceedings.[3] Although determining whether a judge violated a Canon or law may

[2] In addition, neither Judge Renke's Answer to the Second Amended Formal Charges nor his Motion for Summary Judgment on Charge 8 have been posted on the JQC's public website, though none of the JQC's documents appear to be missing.

[3] This Court has stated that "an accused judicial officer is to be accorded both substantive and procedural due process of law." Inquiry Concerning a Judge, 357 So.2d 172, 181 (Fla. 1978). Citing In re Kelley, this Court continued: "The Commission, created by the Constitution as an arm of this Court, is authorized to conduct a hearing for the purpose of aiding this Court in determining whether a judge is unfit or unsuitable. Under the provisions of the Constitution this Court may exclude from the judiciary those persons whose unfitness or unsuitability bears a rational relationship to his qualifications for a judgeship, so long as the adjudication of unfitness rests on constitutionally permissible standards and emerges from a proceeding which conforms to the

require some inquiry into the conduct of others, the JQC should not be allowed to publicly accuse a person who is not a judge of unethical and illegal acts, and find him/her guilty, while depriving him/her of constitutional rights to privacy and the due process of law. Nor should the JQC be allowed to publicly allege and conclude that a judge has engaged in misconduct when the JQC has failed to respect the judge's rights of privacy and due process. Unconstitutional proceedings allowing the JQC to arrive at incorrect or unjust findings of guilt cause the exact harm which the proceedings are intended to discourage: such proceedings wrongly impugn the ethics, integrity and reputation of both the individual judge and the judiciary he represents.

This Court must consider the potential effects of approving the JQC's guilty finding on Count 8. Sanctioning a finding of guilt obtained by violating the constitutional rights of both the judge and a non-party who had a relationship with the judge indicates that the JQC is free to follow the same procedures in the future. Well-qualified candidates for judicial office may be discouraged from running if their success requires the sacrifice of not only their rights, but the constitutional rights of their family, friends and professional associates. Even if the candidates are brave enough to sacrifice those constitutional rights on the altar of judicial

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minimum standards of due process. . . ." Inquiry Concerning a Judge, 357 So.2d 172, 181 (Fla. 1978). (emphasis added)

integrity, they may have little chance of success if the people having relationships with the candidate are not willing to forfeit their own rights, and thus undermine or refuse support for his/her candidacy.

The actual and potential consequences of sanctioning the JQC's unconstitutional proceedings by approving its finding of guilt on Count 8 harm not only the judge and John Renke II but the quality and reputation of the judiciary as a whole. This Court is respectfully urged to reject the JQC's finding of guilt on Count 8 on the ground that it was obtained by proceedings which violated the United States and Florida Constitution.

B. The Panel's Findings and Conclusion that John Renke II Owed Compensation to Judge Renke for Work Performed in the Amount of the Challenged Payments Were Correct

The hearing panel specifically found that "Judge Renke had a valid and reasonable expectation of receiving the funds" (F. p. 32) and stated that he was underpaid. (F. pp. 12, 32) They even acknowledge that upon court approval of the Settlement Agreement in 2003, he would have been entitled to the fees he was paid in 2002. (F. p. 32) Thus, the hearing panel implicitly found that he had performed the work and was entitled to the exact amount he was paid based upon the employment contract.

The clear and convincing evidence presented to the JQC established that an oral employment agreement existed between John Renke II and Judge Renke from

1995 through 2002. The JQC made findings of fact based on the evidence that the oral employment contract contained certain terms.[4] Thus, despite the JQC's description of Judge Renke's "compensation arrangements" as "informal" (F. p.12 citing T. 83), and the JQC's statement that "the entire compensation system was at the total discretion of his father" (F. p.14), the JQC was able to discern specific and binding promises that unquestionably constitute an employment contract.[5]

The oral employment terms were subject to negotiation between John Renke II and Judge Renke from time to time, as found by the JQC. The JQC noted the parties' "[d]iscussions" and "disagreements" over compensation (F. p. 13 citing T. 574, 575; F. p.14, citing T. 577, 587) and the fact that Judge Renke's hourly pay rose from $9 to $11 per hour. (F. p.12) An additional modification of the employment contract occurred in which John Renke II promised Judge Renke a greater portion of the attorneys fees related to a certain series of cases known as the "Driftwood cases". (F. p.14 citing T. 337, 582, 613) In 2000, Judge Renke was

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[4] John Renke II set [Judge Renke's] compensation at $9.00 to $11.00 per hour. There were no benefits such as health insurance. (T. 139, 140) Mr. Renke II always classified the attorneys working for him as 'independent contractors' and they were required to pay their own withholding and all insurance costs. Thus, [Judge] Renke's net compensation was less than $11.00 per hour but he was promised by his father that he would also be paid 20% of the recovery [of attorney's fees] in the firm's larger cases. The larger cases were to be those in which the earned and collected fee was over $10,000. (T. 172, 173)." (F. p.12) The JQC further found that under the agreement, "[Judge Renke] was also to receive the full fee less costs on cases he brought in on his own. (T. 174)." (F., p.12)

[5] According to 11 Fla. Jur. 2d Contracts §1, definitions of contract include: "a set of promises . . . the performance of which the law in some way recognizes as a duty" (citing Restatement, Contracts 2d §1) and in which a promise "is an undertaking, however expressed, either that something shall happen, or that something shall not happen, in the future" (citing Id at §2(1)); an agreement (i.e., manifestation of mutual assent), upon sufficient consideration, to do or refrain from doing a particular lawful act (citing Williston on Contracts (4th ed.) §1:3); and "the bargain of the parties in fact as found in their language or by implication from other circumstances" (citing Florida Statute §671.205, 672.208). There is simply no evidence that Judge Renke was somehow coerced against his will to perform work at John Renke II's whim. Rather, John Renke II was free to offer whatever terms of employment he chose, and Judge Renke was free to either accept them, make a counter-offer or pursue other employment opportunities. The Panel's factual findings that Judge Renke performed work for John Renke II for seven years, and was entitled to be compensated for that work by John Renke II compels a finding that there had been offer and acceptance of terms of employment, which constitutes a contract. The stated terms under which Judge Renke was found to have performed work can only be terms of an employment agreement.

unhappy with the compensation he was receiving, had looked into other employment options, and even received a tempting job offer. (F. p.14, citing T. 121) Judge Renke communicated these facts to John Renke II and they then agreed to modify their employment contract, so that Judge Renke would receive 50% of the Driftwood anticipated attorney fees less costs, rather than the usual 20%, for his subsequent work. (T. p112-119, 177, 179) Although the JQC stated that "[t]here was conflicting evidence on whether the initial 20% figure for large cases was increased to 45% or to 50% (F. p.14 at note 2), it was clear that the parties agreed that Judge Renke would receive a greater percentage. The modification was, in effect, a raise or an offer of increased compensation which was accepted by Judge Renke who continued to perform work for John Renke II.

C. The Panel's Findings and Conclusion That John Renke II and Judge Renke Were Forbidden From Making or Accepting Payment of Driftwood Compensation Before 2003 Were In Error

The Panel's conclusion that, as a matter of Contract Law, an unmodifiable condition in the contract forbid payment before the condition occurred was in error. The JQC does not dispute Judge Renke was entitled to payment but finds the time of payment of the compensation was improper. This finding should be rejected because no evidence or known legal theory supports the JQC's conclusion that the parties were bound by an irrevocable condition specifying time or manner of payment. The Panel found that the parties had modified the contract as to

amount (F. p.14) and raised no objection to this modification. However, the Panel concluded, without providing clear reasoning or any legal authority, that the parties were somehow barred from modifying the time of payment. The key question is not whether John Renke had an enforceable, contractual duty or obligation to pay Judge Renke at a certain point in time, but whether the employment contract barred John Renke and Judge Renke from agreeing to pay the compensation owed in 2002. The JQC confused contractual duties with contractual rights, turning the fact that John Renke II had no legal duty to pay the compensation until his own fees vested under the original employment agreement into a prohibition that the parties to the employment contract could never agree to pay the fees before that time. "Whether a contract contains a condition is to be determined by ascertaining the intent of the parties." 11 Fla. Jur. 2d Contracts §183 (citing Dade County v. O.K. Auto Parts of Miami, 360 So.2d 441 (3d DCA 1978). The result of a condition in a contract is that the duty to perform and a corresponding right to legal enforcement, do not arise until the condition is fulfilled. 11 Fla. Jur. 2d Contracts §§184-187. However, no principle of contract law states that a condition operates to permanently forbid performance unless and until the condition occurs. Id. Rather, the established laws of contract provide that the parties are free to modify.[6] Thus,

[6] **"Parties to a contract may modify or waive their rights under it and engraft new terms upon it; they are ordinarily as free to change it as they were to make it in the first instance. Thus, it is permissible for the parties, at any time before the breach of the contract, either to waive, dissolve, annul, add to, subtract from, vary or qualify the terms of it by a new agreement." 11 Fla. Jur. 2d Contracts §206 (footnotes omitted). Even in contingency fee cases involving attorney's contracts for fees with clients, this court has allowed great freedom to modify. See Lugassy v. Independent Fire Ins. Co., 636 So. 2d 1332 (Fla. 1994). This court stated: "The general freedom of**

assuming arguendo that John Renke II's duty to pay Judge Renke was at some point contingent on him obtaining a "vested right" to the Driftwood fees, the JQC's conclusion that this forever barred him from paying compensation earlier is not supported by contract law. Even if John Renke II and Judge Renke originally agreed that the payment of compensation was conditional, contract principles state they were free to modify their contract.

In determining the meaning and effect of an agreement's terms, the intention of the parties controls. Kuharske v. Lake County Citrus Sales, Inc., 44 So.2d 641, 642 (Fla. 1950). Determining intent requires an examination of "the conduct of the parties and their treatment of said provision for the answer to the question: What is the proper construction?" Id. In 1998, after the cases were combined, the Driftwood parties drafted a comprehensive settlement agreement wherein Defendant agreed to pay directly to John Renke II the attorney fees incurred by the plaintiffs in both Driftwood cases. (T. p 221; JQC Exh. 37) The agreement provided that the Defendant would pay the $60,000 previously approved by the trial court, on a prevailing party basis, for the Triglia case and an additional $98,000 on the larger Cusumano class action case. (JQC Exh. 37) The settlement agreement provided:

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parties to form a contract also supports this rule. 'Competent persons have the utmost liberty of contracting and when these agreements are shown to be voluntarily and freely made and entered into, then the courts usually will uphold and enforce them." Id. at 1335 (citing Wechsler v. Novak, 26 So. 2d 884, 887 (Fla. 1946)).

TOCSA'S Insurer will, within 10 days after this agreement is signed by the attorney, deposit in an interest-bearing account at a place and of a type to be designated by John K. Renke II: (a) $98,000.00 **for plaintiff's attorney fees incurred through the December 1998 mediation"**. (JQC Exh. 37) (emphasis supplied).

The settlement agreement acknowledged that plaintiffs had "incurred" and thus owed legal fees to John Renke II. It is factually incorrect that the legal fees were not earned until 2003 because of the terms of the settlement agreement requiring court approval. The settlement agreement only provided that the Defendants would pay the fees already "incurred" and owed by Plaintiffs to John Renke II and implicitly found the fees had been earned and work legitimately performed from 1995 through 1998. If the condition didn't occur, and Defendant did not pay or the settlement was not approved, the fee was still owed by the Plaintiffs. This was not a contingency fee case but was based upon hourly fees approved by the Court in the Triglia case plus the hours spent on the Cusumano case up to the date of the 1998 mediation, which Defendant agrred were reasonable. (JQC Exh 37) There was no evidence that Judge Renke's compensation was at all dependent on the actual funds being paid by the Defendants pursuant to the settlement agreement. The parties' clear intent was that the amount of compensation owed was calculated as a percent of the total Driftwood fees, and no evidence established intent or agreement that the payment could only be made out of the actual funds John Renke II collected as Driftwood fees.

In the year 2001, the insurance company for the Defendant in the Driftwood litigation paid John Renke II $123,553 for attorney fees for the Cusumano case pursuant to the Settlement Agreement. (T. p.215- 216; JQC Exh 66) The JQC incorrectly found that because the $123,553 paid to John Renke II in 2001 had to be held "in trust", or because there was some risk that the money would have to be paid back, Judge Renke could not be paid for the work he performed until court approval of the agreement in 2003. There is absolutely no factual evidence or legal precedent to support a conclusion that that was the employment agreement intended by John Renke II and Judge Renke. Rather, the testimony proves both parties agreed to payment in 2002 which is further evidenced by the 1099 and tax returns. (T. p. 93-95, 129, 334-335) No evidence of the words or actions of John Renke II or Judge Renke supports a finding that they intended or agreed to forbid modification, or forbid payment in 2002. Under contract law, their words and actions in making and accepting payment in 2002 can only be construed as demonstrating their intent to either modify or cancel any differing pre-existing agreement as to time of payment, to allow payment to occur in 2002. The parties' intent to allow modification of their agreement, rather than forbid it, is evident from the panel's finding that the parties engaged in negotiations, termed "discussions" or "disagreements". (F. p.13 citing T. 574, 575; F. p.14 citing T. 577, 578). The parties' intent to permit modification of the agreement was also

clear from the Panel's finding that the parties had previously modified the amount of compensation owed to Judge Renke (F. p.14). The unrefuted testimony of both John Renke II and Judge Renke was that they agreed that he would be paid his percentage compensation in 2002 as requested by Judge Renke, and the objective proof of the parties' intent and that agreement is the checks paid and the reporting of the payment as income of Judge Renke by both employer and employee. Questions frm the Panel elicited John Renke II's testimony clearly proving the parties' intent to modify, (T. pf.313-314), and the fact of the modification.

In early 2002, John Renke II and Judge Renke mutually agreed that Judge Renke could then be paid his percentage compensation from the Driftwood cases pursuant to the employment contract. (T. p.93-95, 129) Pursuant to the agreement, Judge Renke requested and was paid his half of the Driftwood legal fees less costs from June through September, 2002. (T. p.94, 233-237) The parties clearly had no intent to condition the payment on approval of the Driftwood settlement agreement or John Renke II's receipt of his own fees. Id. John Renke II viewed the payment to Judge Renke in 2002 as only fair, partially because he had already received the $123,533 as income from Driftwood fees in 2001 and was earning interest on it, and because Judge Renke had performed substantial work but his compensation was unexpectedly slow in coming under the terms of

their original agreement, which provided payment was due when John Renke II had earned or collected his own fees.

The parties further agreed in 2002 that John Renke II would retain the funds owed as compensation and disburse them to Judge Renke on an "as needed" basis, which benefited both parties. Margaret Renke testified that the compensation was paid to Judge Renke at his request in a piecemeal fashion because he had already earned substantial money in 2002 from other cases and wanted to defer his Driftwood income as long as possible for tax reasons. (T. p. 636-637) Judge Renke testified that he asked for the payment of the Driftwood fees in a staggered manner as he needed specific amounts because he wanted to use as little as possible for his campaign so the rest could be used to purchase a home. (T. p.147; and see similar testimony of Michelle Renke at p. 585-586) John Renke II also desired the piecemeal payments because he felt there was still a slight risk that the settlement would not be approved. (T. p. 282)

Clearly the evidence established that the only two parties to the employment contract agreed long before 2002 what percentage of the Driftwood fees would be owed to Judge Renke for the work he performed. The amount of compensation due was then set by the amount of fees agreed to in the 1998 Settlement Agreement which provided that the opposing party rather than the Plaintiff clients would pay the unquestionably earned attorney fees John Renke II received a payment of his

own attorney fees in 2001. Also clear was that the same two parties to the contract of employment in 2002 were free to agree that John Renke II would pay Judge Renke his compensation owed as a percent of the anticipated Driftwood cases in 2002, and indeed both of them declared it as income to Judge Renke in their respective tax returns for 2002.[7]

According to Contract Law, time of payment of compensation for work performed is properly determined by agreement of the parties involved.[8] It is not the province of the JQC to engraft a new condition or term of contract when the parties' words and actions show this is contrary to the parties' intent. In effect, the JQC rewrote the employment contract to dictate when it would allow Judge Renke to be paid for the work he performed, and their finding should be rejected.

D. The Panel's Findings and Conclusion That John Renke II Made a Contribution Were in Error Because the Clear Purpose of His Payment Was Compensation for Work Performed

Although the JQC devoted its attention to the contract between John Renke II and Judge Renke, it failed to address the key issue: Was John Renke II's 2002 payment to Judge Renke "made for the purpose of influencing an election", which is the definition of contribution? Florida Statute §106.011(3)(a). The JQC found

[7] In the unlikely event that the JQC's finding that Judge Renke was entitled to compensation was based on an unstated quantum meruit theory, there is still no factual evidence or known equitable precedent supporting the conclusion that payment in 2002 was forbidden. A quantum meruit rationale does not seem likely because if the JQC had not concluded that the employment agreement was valid, there was no justification at all to impose a condition that payment would be made after John Renke II had a right to his own fees.

[8] An employer can agree to pay an employee for his legal services despite the employer's risk that the fees could be delayed or never received. There is always a chance the client could claim the attorney fees paid were not earned or malpractice occurred or the lawyer was not entitled to all or a portion of the fees, and the attorney might have to pay back those fees. However, the inevitable risk that an attorney's right to fees could be challenged does not mean the attorney is barred by law from paying his employees for the work performed.

that John Renke II had made an improper contribution based on his knowledge of Judge Renke's candidacy, and his normal parental desire to see his son succeed at a chosen endeavor. The JQC did not apply the Division of Elections standards stating that a contribution has been made only when the sole purpose of the payment is to influence an election[9], and that a payment of money is not a contribution when it is clearly identified to be otherwise. [10]

Unlike the payment in In re Rodriguez, John Renke II's payment was not made for the sole purpose of influencing an election.[11] Although John Renke II was aware of the potential and then actual candidacy of his son, Judge Renke, his sole or primary purpose in making the 2002 payments was clearly to compensate Judge Renke for work performed. Further, the objective documentation of the payment clearly identified it as income to Judge Renke, not a contribution. The payments to Judge Renke were documented as income by a 1099 form given to both Judge Renke and the IRS by his employer, John Renke II, and Judge Renke's tax return. (T. p. 630, 132-133; JQC Exh. 46)

It is clear from the evidence and findings that John Renke II's purpose in issuing the challenged payments to Judge Renke was to pay to the judge his hard-earned and long-awaited employment income. Further, Margaret Renke and John

[9] Division of Elections Opinion DE 82-16 dated July 8, 1982

[10] Division of Elections Opinion DE 78-37 dated August 21, 1978

[11] In re Rodriguez held the judge guilty of violating Florida Statutes Chapter 106 based on the JQC's finding and judge's stipulation that the judge "knowingly accepted a campaign contribution in the amount of $200,000 made for the purpose of influencing the results of her judicial contest." Id. at 829 So. 2d 857, 858 (Fla. 2002).

Renke both testified that any request by Judge Renke in 2002 for more money than the compensation he was entitled to under the employment agreement would not have been granted, even if the money was needed for his campaign. (T. p. 303, 650) This clearly shows that the purpose of the 2002 payments was solely or primarily compensation for work performed, and that the payments were not a contribution to Judge Renke's campaign.

For all of the foregoing reasons, this court is respectfully asked to reject the JQC's finding on Count 8 that the factual allegations and evidence of John Renke's conduct clearly and convincingly proved the alleged violations of the statutes and canons.

Respectfully submitted,

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John K. Renke II

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 2006, the original of the foregoing MOTION FOR LEAVE TO SUBMIT BRIEF AMICUS CURIAE CONTAINED HEREIN AND BRIEF AMICUS CURIAE RESPECTFULLY REQUESTING THIS COURT TO OVERTURN THE JQC'S FINDING OF JUDGE RENKE'S GUILT AS TO COUNT 8 has been furnished by electronic transmission via e-file@flcourts.org and furnished by FedEx overnight delivery to: Honorable *Thomas D. Hall*, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-19 27; and true and correct copies have been furnished by U.S. Mail to *Scott K. Tozian*, Esquire, Smith, Tozian & Hinkle, 109 North Brush Street, Suite 200, Tampa, Florida 33602; *Marvin E. Barkin*, Esquire, and *Michael K. Green*, Esquire, Special Counsel, 2700 Bank of America Plaza, 101 East Kennedy Boulevard, P.O. Box 1102, Tampa, Florida 33601-1102 and *John R. Beranek*, Esq., Counsel to the Hearing Panel, P.O. Box 391, Tallahassee, Florida 32302.

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John K. Renke II

CERTIFICATE OF FONT SIZE AND STYLE

I HEREBY CERTIFY that the size and style of type used in this brief are 14 point, proportionately spaced Times New Roman font.

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John K. Renke II